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10 *Thomas W. McNamara*

11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA

13 FEDERAL TRADE COMMISSION,

Case No. 2:18-cv-00030-JCM-BNW

14 Plaintiff,

**JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT WITH
OLMSTED CAPITAL, LLC**

15 v.

16 CONSUMER DEFENSE, LLC, et al.,

17 Defendants.
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1 The Court-appointed receiver Thomas W. McNamara (the “Receiver”) and non-party
 2 Olmsted Capital, LLC (“Olmsted”) jointly move the Court to approve the proposed Settlement
 3 Agreement, which resolves a dispute between the Receiver and Olmsted who holds a promissory
 4 note secured by a deed of trust against real property located at 41 West 9000 South, Sandy, Utah
 5 (the “Sandy Office Building”), an office building owned by Receivership Entity Zinly, LLC
 6 (“Zinly”). A true and correct copy of the Settlement Agreement is attached as Exhibit 1 to the
 7 Declaration of Edward Chang (“Chang Decl.”). Counsel for Plaintiff Federal Trade Commission
 8 (“FTC”) has stated that the FTC does not oppose this motion.

9 **I. Background**

10 On January 18, 2019, the Court granted the Receiver’s motion to sell the Sandy Office
 11 Building and order him to submit an order appointing three appraisers. ECF No. 182. As noted
 12 in the Receiver’s sale motion, the Sandy Office Building is subject to a matured promissory note
 13 in the amount of \$510,000. *See* ECF No. 101 at 3. After the Court issued the order appointing
 14 three appraisers for the Sandy Office Building on April 30, 2019, the Receiver obtained
 15 appraisals and listed the property. While the Receiver received offers for the property, Olmsted,
 16 the holder of the promissory note, issued a payoff demand in excess of the highest offer received.

17 **II. Discussion**

18 Currently, a dispute exists between the Receiver and Olmsted concerning (i) whether
 19 Zinly defaulted on the loan prior to the commencement of the instant action and appointment of
 20 the Receiver and (ii) the current balance owing under the promissory note. Both the Receiver
 21 and Olmsted recognize that litigating these issues is likely to be costly and time-consuming.
 22 Accordingly, the Receiver and Olmsted have engaged in extensive pre-litigation settlement
 23 discussions, which resulted in the proposed Settlement Agreement. Provided the Court approves
 24 the Settlement Agreement, Olmsted will pay \$80,000 to the Receiver in exchange for resolving
 25 the dispute and the Receiver will transfer the Sandy Office Building to Olmsted by deed in lieu
 26 of foreclosure. The Receiver will also be responsible for outstanding property taxes,
 27 assessments, and utilities until the property is transferred to Olmsted.

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1 Since the FTC was awarded a judgment in the amount of \$18,428,370 against Defendants
 2 (ECF Nos. 320 and 323), the FTC has prevailed. It will, therefore, receive any amount collected
 3 by the Receiver. Therefore, only the FTC has a stake in the question of whether this Court
 4 should approve the Settlement Agreement. The FTC has been informed of the settlement terms
 5 and has indicated that it does not oppose this motion. *See Chang Decl.* at ¶ 4.

6 If the Court is satisfied with the Settlement Agreement, the Receiver and Olmsted ask for
 7 an order approving the Settlement Agreement and that the Court retain jurisdiction to interpret
 8 and enforce the agreement. If the Court wishes to further inquire about the matter prior to
 9 issuing an order, the Receiver asks that the Court set this motion for a hearing or otherwise
 10 instruct the Receiver to file a report as to any issue where further information is needed.

11 **III. Conclusion**

12 For the reasons set forth above, the Receiver and Olmsted hereby jointly ask that the
 13 Court issue an order approving the Settlement Agreement. A proposed order is attached for the
 14 Court's convenience.

15 Dated: April 7, 2020

16 Respectfully submitted by:

17 /s/ Edward Chang
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 Thomas W. McNamara*

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of April, 2020, pursuant to Fed. R. Civ. P. 5(b), I served via CM/ECF or delivered by email and mailing in the U.S. Mail, a true and correct copy of the foregoing **JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT WITH OLMSTED CAPITAL, LLC**, postage prepaid and addressed to the following:

VIA CM/ECF

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